

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

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CEDRIC DEWONG ALLEN, JR.,

Petitioner,

Case No. 2:25-cv-39

v.

Honorable Sally J. Berens

JAMIE CORRIGAN,

Respondent.

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**OPINION**

This is a habeas corpus action brought by a state prisoner under 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c) and Rule 73 of the Federal Rules of Civil Procedure, Petitioner consented to proceed in all matters in this action under the jurisdiction of a United States magistrate judge. (ECF No. 5.) Section 636(c) provides that “[u]pon the consent of the parties, a full-time United States magistrate judge . . . may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case . . . .” 28 U.S.C. § 636(c).

This case is presently before the Court for preliminary review pursuant to 28 U.S.C. § 2253 and Rule 4 of the Rules Governing § 2254 Cases. The Court is required to conduct this initial review prior to the service of the petition. Rule 4, Rules Governing § 2254 Cases.

Service of the petition on the respondent is of particular significance in defining a putative respondent’s relationship to the proceedings. “An individual or entity named as a defendant is not obliged to engage in litigation unless notified of the action, and brought under a court’s authority, by formal process.” *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999). “Service of process, under longstanding tradition in our system of justice, is fundamental to any

procedural imposition on a named defendant.” *Id.* at 350. “[O]ne becomes a party officially, and is required to take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend.” *Id.* (citations omitted). That is, “[u]nless a named defendant agrees to waive service, the summons continues to function as the *sine qua non* directing an individual or entity to participate in a civil action or forgo procedural or substantive rights.” *Id.* at 351.

Rule 4, by requiring courts to review and even resolve the petition before service, creates a circumstance where there may only be one party to the proceeding—the petitioner. Because Respondent has not yet been served, the undersigned concludes that Respondent is not presently a party whose consent is required to permit the undersigned to conduct a preliminary review of the petition. *See Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995) (“The record does not contain a consent from the defendants[; h]owever, because they had not been served, they were not parties to th[e] action at the time the magistrate entered judgment.”).<sup>1</sup> Petitioner’s consent is sufficient to permit the undersigned to conduct the Rule 4 review.

The Court conducts a preliminary review of the petition under Rule 4 to determine whether “it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing § 2254 Cases; *see* 28 U.S.C. § 2243. If so, the petition must be summarily dismissed. Rule 4; *see Allen v. Perini*, 424 F.2d 134,

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<sup>1</sup> *But see Coleman v. Lab. & Indus. Rev. Comm’n of Wis.*, 860 F.3d 461, 471 (7th Cir. 2017) (concluding that, when determining which parties are required to consent to proceed before a United States magistrate judge under 28 U.S.C. § 636(c), “context matters” and the context the United States Supreme Court considered in *Murphy Bros.* was nothing like the context of a screening dismissal pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c)); *Williams v. King*, 875 F.3d 500, 503–04 (9th Cir. 2017) (relying on Black’s Law Dictionary for the definition of “parties” and not addressing *Murphy Bros.*); *Burton v. Schamp*, 25 F.4th 198, 207 n.26 (3d Cir. 2022) (premising its discussion of “the term ‘parties’ solely in relation to its meaning in Section 636(c)(1), and . . . not tak[ing] an opinion on the meaning of ‘parties’ in other contexts”).

141 (6th Cir. 1970) (discussing that a district court has the duty to “screen out” petitions that lack merit on their face). A dismissal under Rule 4 includes those petitions that raise legally frivolous claims, as well as those containing factual allegations that are palpably incredible or false. *Carson v. Burke*, 178 F.3d 434, 436–37 (6th Cir. 1999). After undertaking the review required by Rule 4, the Court concludes that the petition must be dismissed because it fails to raise a meritorious federal claim.

### **Discussion**

#### **I. Factual Allegations**

Petitioner Cedric Dewong Allen, Jr. is incarcerated with the Michigan Department of Corrections at the Chippewa Correctional Facility (URF) in Kincheloe, Chippewa County, Michigan. On March 13, 2008, a Muskegon County Circuit Court jury convicted Petitioner of armed robbery, in violation of Mich. Comp. Laws § 750.529; two counts of possession of a firearm during the commission of a felony (felony-firearm), in violation of Mich. Comp. Laws § 750.227b; and felon in possession of a firearm, in violation of Mich. Comp. Laws § 750.224f. *See People v. Allen*, No. 285560, 2009 WL 3014573, at \*1 (Mich. Ct. App. Sept. 22, 2009). On April 4, 2008, the trial court sentenced Petitioner as a fourth-offense habitual offender, Mich. Comp. Laws § 769.12, to 30 to 50 years for the armed robbery, 1 to 10 years for the felon in possession conviction, and consecutive sentences of 2 years for the felony-firearm convictions. *See* Offender Tracking Information Service, <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=468492> (last visited Mar. 14, 2025).

Petitioner, with the assistance of counsel, appealed his convictions and sentences to the Michigan Court of Appeals, arguing that: (1) trial counsel was ineffective for failing to obtain an expert witness in footwear impressions to testify that the footprints found on a path near the store were made by a commonly worn type of shoes; (2) the investigating detective’s testimony

“invaded the province of the jury” when the detective testified about his observations of Petitioner’s verbal and nonverbal responses during a taped interview; (3) the evidence was insufficient to support the armed robbery and felony-firearm convictions; (4) Petitioner’s convictions for felony-firearm and felon in possession violated his Fifth Amendment right to be free from double jeopardy; and (5) Petitioner’s Sixth Amendment right to a jury trial was violated when his sentence was fashioned based upon judge-found facts. *See, generally, Allen*, 2009 WL 3014573.

The Michigan Court of Appeals set forth the following facts underlying Petitioner’s convictions:

An armed robbery occurred at approximately 6:25 a.m. on October 23, 2007, at the Mobil Mart on Peck Street in Muskegon Heights, Michigan. [Petitioner’s] residence is near the store. Shortly after the store opened, the clerk went to the back of the store to switch on the security cameras when she heard someone enter the store. When the clerk returned to the front counter the assailant pointed a gun at the clerk and told her “give me the money.” The clerk gave the assailant the money and he left the store. The store’s surveillance camera equipment captured the incident on videotape, and also recorded [Petitioner] patronizing the store the night before wearing similar clothing. The store clerk identified [Petitioner] as the perpetrator of the crimes based on his physical stature and the two surveillance videotapes. Both videotapes showed a man wearing a dark blue hooded sweatshirt, sweatpants, and black Nike tennis shoes in both videos, although the man’s face was covered with a hairnet during the robbery. Police found the hairnet, tennis shoes, gun, and hooded sweatshirt in [Petitioner’s] room at his residence. Police arrested [Petitioner], and he was charged and convicted.

*Id.* at \*1.

On September 22, 2009, the court of appeals rejected Petitioner’s claims of error and affirmed his convictions and sentences. *Id.* The Michigan Supreme Court denied Petitioner’s application for leave to appeal on December 21, 2009. *See People v. Allen*, 775 N.W.2d 761 (Mich. 2009).

On November 29, 2010, Petitioner filed a motion for relief from judgment pursuant to Michigan Court Rule 6.502. *See Register of Actions, People v. Allen*, No. 2007-0000055641-FC,

(Muskegon Cnty. Cir. Ct), <https://micourt.courts.michigan.gov/case-search/court/C14> (enter “Allen” for “Last Name or Business,” enter “Cedric for “First Name,” select “Search,” then select the entry for Case ID 2007-0000055641-FC) (last visited Mar. 14, 2025). The public docket available online does not indicate when or how that motion was resolved.

Petitioner filed another motion for relief from judgment pursuant to Rule 6.502 on September 19, 2022. *See id.* The docket reflects that the trial court denied that motion on February 23, 2023. *Id.* The Michigan Court of Appeals denied Petitioner’s application for leave to appeal on July 18, 2024, and subsequently denied Petitioner’s motion for reconsideration on August 23, 2023. *See* Register of Actions, *People v. Allen*, No. 365980 (Mich. Ct. App.), <https://www.courts.michigan.gov/c/courts/coa/case/365980> (last visited Mar. 14, 2025). The Michigan Supreme Court denied Petitioner’s application for leave to appeal on March 27, 2024, and subsequently denied Petitioner’s motion for reconsideration on July 2, 2024. *See id.*

The Court received the instant Section 2254 petition on March 10, 2025. Petitioner sets forth the following two grounds for relief in his petition:

- I. Petitioner’s United States Fourteenth Amendment right[s] have been violated where newly discovered evidence shows that the Petitioner is unlawfully incarcerated after receiving an affidavit of Dmitri Anderson admitting to the crime the Petitioner has been wrongly convicted of.
- II. Petitioner’s new evidence presented a claim of actual innocence and miscarriage of justice claim.

(§ 2254 Pet., ECF No. 1, PageID.4–7.)

## **II. AEDPA Standard**

The AEDPA “prevent[s] federal habeas ‘retrials’” and ensures that state court convictions are given effect to the extent possible under the law. *Bell v. Cone*, 535 U.S. 685, 693–94 (2002). An application for writ of habeas corpus on behalf of a person who is incarcerated pursuant to a

state conviction cannot be granted with respect to any claim that was adjudicated on the merits in state court unless the adjudication:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). “Under these rules, [a] state court’s determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court’s decision.” *Stermer v. Warren*, 959 F.3d 704, 721 (6th Cir. 2020) (internal quotation marks omitted) (quoting *Harrington v. Richter*, 562 U.S. 86, 101 (2011)); *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004). This standard is “intentionally difficult to meet.” *Woods v. Donald*, 575 U.S. 312, 316 (2015) (internal quotation marks omitted).

The AEDPA limits the source of law to cases decided by the United States Supreme Court. 28 U.S.C. § 2254(d). In determining whether federal law is clearly established, the Court may not consider the decisions of lower federal courts. *Williams v. Taylor*, 529 U.S. 362, 381–82 (2000); *Miller v. Straub*, 299 F.3d 570, 578–79 (6th Cir. 2002). Moreover, “clearly established Federal law” does not include decisions of the Supreme Court announced after the last adjudication of the merits in state court. *Greene v. Fisher*, 565 U.S. 34, 37–38 (2011). Thus, the inquiry is limited to an examination of the legal landscape as it would have appeared to the Michigan state courts in light of Supreme Court precedent at the time of the state-court adjudication on the merits. *Miller v. Stovall*, 742 F.3d 642, 644 (6th Cir. 2014) (citing *Greene*, 565 U.S. at 38).

A federal habeas court may issue the writ under the “contrary to” clause if the state court applies a rule different from the governing law set forth in the Supreme Court’s cases, or if it decides a case differently than the Supreme Court has done on a set of materially indistinguishable facts. *Bell*, 535 U.S. at 694 (citing *Williams*, 529 U.S. at 405–06). “To satisfy this high bar, a

habeas petitioner is required to ‘show that the state court’s ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.’” *Woods*, 575 U.S. at 316 (quoting *Harrington*, 562 U.S. at 103).

Determining whether a rule application was unreasonable depends on the rule’s specificity. *Stermer*, 959 F.3d at 721. “The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations.” *Yarborough*, 541 U.S. at 664. “[W]here the precise contours of the right remain unclear, state courts enjoy broad discretion in their adjudication of a prisoner’s claims.” *White v. Woodall*, 572 U.S. 415, 424 (2014) (internal quotation marks omitted).

The AEDPA requires heightened respect for state factual findings. *Herbert v. Billy*, 160 F.3d 1131, 1134 (6th Cir. 1998). A determination of a factual issue made by a state court is presumed to be correct, and the petitioner has the burden of rebutting the presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); *Davis v. Lafler*, 658 F.3d 525, 531 (6th Cir. 2011) (en banc); *Lancaster v. Adams*, 324 F.3d 423, 429 (6th Cir. 2003); *Bailey v. Mitchell*, 271 F.3d 652, 656 (6th Cir. 2001). This presumption of correctness is accorded to findings of state appellate courts, as well as the trial court. *See Sumner v. Mata*, 449 U.S. 539, 546–547 (1981); *Smith v. Jago*, 888 F.2d 399, 407 n.4 (6th Cir. 1989).

Section 2254(d) limits the facts a court may consider on habeas review. The federal court is not free to consider any possible factual source. The reviewing court “is limited to the record that was before the state court that adjudicated the claim on the merits.” *Cullen v. Pinholster*, 563 U.S. 170, 180 (2011). “If a review of the state court record shows that additional fact-finding was required under clearly established federal law or that the state court’s factual determination was unreasonable, the requirements of Section 2254(d) are satisfied and the federal court can review

the underlying claim on its merits. *Stermer*, 959 F.3d at 721 (citing, *inter alia*, *Brumfield v. Cain*, 576 U.S. 305 (2015), and *Panetti v. Quarterman*, 551 U.S. 930, 954 (2007)).

If the petitioner “satisfies the heightened requirements of § 2254(d), or if the petitioner’s claim was never ‘adjudicated on the merits’ by a state court, 28 U.S.C. § 2254(d),”—for example, if he procedurally defaulted the claim—“AEDPA deference no longer applies.” *Stermer*, 959 F.3d at 721. Then, the petitioner’s claim is reviewed *de novo*. *Id.* (citing *Maples v. Stegall*, 340 F.3d 433, 436 (6th Cir. 2003)).

### III. Discussion

Although Petitioner asserts two grounds for habeas relief, both grounds for relief essentially contend that Petitioner is actually innocent. Petitioner purports that he has received an affidavit from Dmitri Anderson, in which Anderson admits to the crimes of which Petitioner was convicted. (§ 2254 Pet., ECF No. 1, PageID.4.) Notably, Petitioner has not attached the affidavit to his Section 2254 petition. Petitioner contends that in light of this affidavit, no reasonable juror would find him guilty beyond a reasonable doubt. (*Id.*)

Petitioner, however, fails to state a cognizable federal claim for habeas relief. The Supreme Court has stated: “Claims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding.” *Herrera v. Collins*, 506 U.S. 390, 400 (1993). But the *Herrera* Court did not close the door completely, stating in dicta that “in a capital case a truly persuasive demonstration of ‘actual innocence’ made after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim.” *Id.* at 417. Thus, even without the occurrence of any independent constitutional violation during the state criminal proceeding, federal habeas relief might be warranted for “truly persuasive demonstration of actual innocence,” provided: (1) the



habeas petition seeks relief in a capital case, in which case such a demonstration of actual innocence “would render the execution of a defendant unconstitutional”; and (2) there is “no state avenue open to process such a claim.” *Id.* The Supreme Court emphasized that “the threshold showing for such an assumed right would necessarily be extraordinarily high.” *Id.*; *see also House v. Bell*, 547 U.S. 518, 555 (2006) (“In *Herrera*, however, the Court described the threshold for any hypothetical freestanding innocence claim as ‘extraordinarily high.’”); *Cress v. Palmer*, 484 F.3d 844, 854–55 (6th Cir. 2007).

Two years after *Herrera*, the Supreme Court held that a claim of actual innocence can be raised “to avoid a procedural bar to the consideration of the merits of [the petitioner’s] constitutional claims.” *Schlup v. Delo*, 513 U.S. 298, 326–27 (1995). “[I]n an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default.” *Murray v. Carrier*, 477 U.S. 478, 496 (1986). In *Schlup*, the Supreme Court held that a credible showing of actual innocence was sufficient to enable a court to reach the merits of an otherwise procedurally barred habeas petition. *Schlup*, 513 U.S. at 317. The actual innocence claim in *Schlup* is “not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits.” *Id.* at 315 (citing *Herrera*, 506 U.S. at 404). Thus, the Supreme Court distinguished between a procedural innocence claim, which can permit a petitioner to overcome procedural obstacles that would otherwise preclude review of underlying constitutional claims, and a substantive or “free-standing” claim of innocence discussed in *Herrera*.

This Court may grant habeas corpus relief only when the state court has violated or unreasonably applied a clearly established holding of the Supreme Court. *See* 28 U.S.C. § 2254(d);

*Williams*, 529 U.S. at 412. Recently, the Sixth Circuit acknowledged that the actual innocence “equitable-exception [to the AEDPA statute of limitations] doctrine is not a freestanding substantive claim for habeas relief. The Supreme Court has not decided whether actual innocence is a substantive ground for relief.” *Hubbard v. Rewerts*, 98 F.4th 736, 742 (6th Cir. 2024); *see also Smith v. Nagy*, 962 F.3d 192, 206 (6th Cir. 2020) (citing *Schlup* and *Herrera* for the proposition that freestanding claims of actual innocence are not cognizable on habeas corpus review); *Cress*, 484 F.3d at 854 (citing cases for the same proposition). Accordingly, in the absence of clearly established Supreme Court precedent establishing a freestanding claim of actual innocence, Petitioner’s claims are without merit.

Even if Petitioner could invoke the *Herrera* exception and obtain habeas relief on his freestanding innocence claims, he would have to meet both of the requirements set forth above and then overcome the “extraordinarily high” threshold. Petitioner fails the first requirement. This is not a capital case, and, thus, the concern about the unconstitutionality of executing a defendant who has shown persuasive evidence of actual innocence is not implicated. *See Cress*, 484 F.3d at 855 (“We first point out the obvious - that this is not, in fact, a capital case.”). Accordingly, for these reasons, Petitioner is not entitled to relief on his two grounds for habeas relief.<sup>2</sup>

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<sup>2</sup> As part of his first ground for relief, Petitioner faults the state courts for not conducting an evidentiary hearing regarding his claim of actual innocence. (§ 2254 Pet., ECF No. 1, PageID.4.) However, the state courts’ determination that an evidentiary hearing was not warranted is entirely an issue of state law that is not cognizable on federal habeas review. *See Estelle v. McGuire*, 502 U.S. 62, 67 (1991). In addition, “the Sixth Circuit has consistently held that errors in post-conviction proceedings are outside the scope of federal habeas corpus review.” *Cress*, 484 F.3d at 853 (citing *Kirby v. Dutton*, 794 F.2d 245, 246-47 (6th Cir. 1986); *Roe v. Baker*, 316 F.3d 557, 571 (6th Cir. 2002)). “[T]he traditional function of the writ is to secure release from illegal custody,” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973), but a due process claim with respect to the failure to conduct an evidentiary hearing during post-conviction proceedings, even if resolved in Petitioner’s favor, would not impact Petitioner’s custody. In reviewing such a claim, the Court “would not be reviewing any matter directly pertaining to” that custody. *Cress*, 484 F.3d at 853 (quoting *Kirby*, 794 F.2d at 247). Even if the Court were to conclude that the state courts erred by

#### IV. Certificate of Appealability

Under 28 U.S.C. § 2253(c)(2), the Court must determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

The Sixth Circuit Court of Appeals has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001) (per curiam). Rather, the district court must “engage in a reasoned assessment of each claim” to determine whether a certificate is warranted. *Id.* Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473 (2000). *Murphy*, 263 F.3d at 467. Consequently, this Court has examined each of Petitioner’s claims under the *Slack* standard. Under *Slack*, 529 U.S. at 484, to warrant a grant of the certificate, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* “A petitioner satisfies this standard by demonstrating that jurists of reason could . . . conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, the Court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of Petitioner’s claims. *Id.*

The Court finds that reasonable jurists could not conclude that this Court’s dismissal of Petitioner’s claims was debatable or wrong. Therefore, the Court will deny Petitioner a certificate of appealability. Moreover, although Petitioner has failed to demonstrate that he is in custody in violation of the Constitution and has failed to make a substantial showing of the denial of a

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not holding an evidentiary hearing, Petitioner would not automatically be released from custody or be granted a new trial. Rather, the likely remedy would be that Petitioner would receive an evidentiary hearing.

constitutional right, the Court does not conclude that any issue Petitioner might raise on appeal would be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

**Conclusion**

The Court will enter a judgment dismissing the petition and an order denying a certificate of appealability.

Dated: April 1, 2025

/s/ Sally J. Berens  
SALLY J. BERENS  
United States Magistrate Judge